XII-189 / (Jail)
S. J. P. R. 11/94/2,000

CF0000058400

CrA 972/95

(2)

APPEAL OF PRISONER

Division Bench (Criminal)

No. 2272 Name SUNARAM

Father's name SONSAI Kamar R/o Nahpani, P/s - Mainpur.

Residence Raipur (M.P.) Age 30 year's

Sentenced to Imprisonment For life On 12.5.1995

Under section 302 I.P.C. by IV Additional Judge to the court of Sessions Sessions Division, Raipur (M.P.)

S.T. No. 288/94

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received 5-6-1995

3 Date on which Appeal sent 9-6-1995

4 Whether the prisoner wishes to be represented or not – Yes / No

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No..... Name Sunaram S/o Sonsai Kamar.

Confined in CENTRAL Jail RAIPUR (M.P.)

No. 291/Law Dated 9/6/1995

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ Addl. Registrar, Hon'ble High Court of Madhya pradesh Jabalpur.

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

12-6-95 to 9-6-95
Copy in time

Superintendent
Central Jail, Raipur. (M.P.)
Jail

Date of receipt in ..... office .....

Date of receipt record to accompany the .....

Memo of Appeal to the Appellate court .....

High Court of Madhya Pradesh
JABALPUR
26 JUN 1995
Reg. No. 289
Recept Clerk
High Court, Jabalpur

No ..... Dated ..... 199.....

Forwarded to the .....

Date of receipt in Appellate Court .....

(P. T. O.)

(18)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cri. Appeal No. 972/95

मामला क्रमांक ..... सन् 200

विरुद्ध

आदेश का. दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench :
Hon'ble Shri Justice L.C. Bhadoo, J &
Hon'ble Shri Justice V.K Shrivastava, J.

09/12/2005

Shri Suryakant Mishra, Counsel for the appellant.

Shri Ashish Shukla, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the respondent/State.

Oral Judgment.

This appeal is directed against the judgment dated 12/05/1995 passed by IVth Additional Sessions Judge, Raipur, in Sessions Trial No. 288/1994 whereby the learned Additional Sesisons Judge, Raipur, after holding the accused/appellant guilty for the commission of murder of his wife- Budhiyarin Bai, convicted under Section 302 of the I.P.C and sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that Chaituram, brother of the accused/appellant gave a report (Ex.P/2) to the Station House Officer, Police Station: Mainpur on 25/04/1994 to the effect that at about 5.00 a.m. his younger brother Sunaram came to his house and informed him that his wife Budhiyarin Bai was not at his house. He was sleepig with the child. In the morning after waking up, he enquired the whereabouts of his wife and he saw that the body of Budhiyarin Bai was lying near water

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

spring on which he informed Faguram and Sumaru and all of them saw the body which was lying in flat condition. There was clotted blood on the nostril and mouth. There was no visible injury on the body. On receiving the report, Station House Officer, Police Station: Mainpur took up the investigation and went to the place of occurrence, ~~and~~ prepared Panchnama of the dead body of Budhiyarin Bai (Ex.P/7). The dead body was sent for postmortem to Doctor Sunil Singh, Assistant Surgeon (PW/6) Mainpur, who conducted the postmortem on the body of Budhiyarin Bai (Ex.P/5) in which he opined that the cause of death of Budhiyarin Bai was asphyxia due to throttling upon which first information report was registered under Ex.P/8. Accused/appellant while in police custody, gave a memorandum regarding weapon and in pursuance of that he got recovered a wooden club (Ex.P/10). After completition of investigation, charge-sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Gariyabandh, who in turn committed the case to the Sessions Judge, Raipur from where IVth Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to prove the offence against the accused/appellant examined nine witnesses. On the other hand, the learned Sessions Judge recorded the statement of the accused/appellant under Section 313 of the Cr.P.C., in which he

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

denied the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of learned Additional Public Prosecutor and the learnd counsel for the accused/appellant, convicted and sentenced the accused as mentioned in the first paragraph of the judgment.

We have heard Mr. Suryakant Mishra, learned counsel for the accused/appellant and Mr. Ashish Shukla, Additional Public Prosecutor with Shri M.P.S. Bhatia, Panel Lawyer for the respondent/State, perused the judgment of the trial Court and the evidence available on record.

The fact of the homicidal nature of death of Budhiyarin Bai has not been disputed by learned counsel for the accused/appellant. Apart from that, as per the evidence of PW/6 Dr. Sunil Singh and the postmortem report (Ex.P/5), it has come on record that Budhiyarin Bai died on account of axphyxia due to throttling. Therefore, it is esablshed that the death of Budhiyarin Bai was homicidal in nature.

As far as involvement of the accused/appellant in committing the murder of his wife is concerned, there is no direct and ocular evidence to the incident and the whole case is based on

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

circumstantial evidence i.e., extra judicial confession made by the accused/appellant before Tiharuram Patel and Faghuram Patel. In order to prove the offence against the accused/appellant based on the circumstantial evidence, before the Court can base conviction on circumstantial evidence, the Court must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point only to the guilt of te accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused, as has been held by Hon'ble the Apex Court in the case of ***Nasar Ahmed and another Vs. State of Bihar, reported in AIR 2001 SC 2416.***

Now, we shall proceed to examine the evidence adduced by the prosecution. One witness namely Faguram before whom the accused/appellant said to have made extra judicial confession has not been examined by the prosecution. In para 1 of examination-in-chief PW/3 Tiharuram Patel has stated that the accused/appellant Sunaram came to his house on Monday and informed him that he has murdered his wife and thereafter he went to the house of Chaituram, the brother of Sunaram and apprised him about what Sunaram told him and Sunaram went to the house of other Patel of the village. This witness along with

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Chaituram went to Police Station: Mainpur to lodge report, and thereafter the Police came to the place of occurrence and prepared Panchnama of dead body of Budhiyarin Bai, and on Tuesday the Police enquired from the accused. In paragraph 3 of the cross-examination by D.P.P. (prosecution), this witness has stated that in the first instance, Sunaram told him that his wife had died on account of fall in the forest and on second time when he asked about the correct thing then accused/appellant Sunaram told him that he has committed the mistake and murdered his wife and thereafter this witness went to the house of Chaituram along with Sunaram and informed him what Sunaram told him, and thereafter he along with Chaituram and Kotwar Maniram went to the Police Station and the Station House Officer had written a report after ascertaining the facts from Chaituram. In paragraph 7 of the cross-examination by counsel for the accused/appellant, this witness has stated that the correct report was not lodged at the Police Station, therefore, he apprised that the report is not correct and thereafter SHO took report from him and obtained his thumb impression. SHO did not believe their statements and he came to the village and for three days he enquired the matter in the village and after beating by the Police the accused/appellant for the first time disclosed that he has murdered his wife and before that he never disclosed this fact.

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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In order to convict the accused based on extra judicial confession made by the accused, the Court was required to ascertain that the extra judicial confession made by the accused was voluntary and true. The evidence of this witness shows that before Faguram the accused is said to have made extra judicial confession, but he has not been examined and the evidence of PW/3 – Tiharuram does not inspire confidence because the evidence is wavering. In the first instance, he has stated that the accused/appellant came to his house and informed him that he has murdered his wife, thereafter he has stated that the accused told him that his wife died due to fall in the forest and then he enquired from him and asked him to tell the correct thing, then he disclosed that he had murdered his wife. Morever, this witness stated that he was accompanied by Chaituram when the report (ExP/2) was lodged before the Police Station and again in paragraph 7 of cross-examination contrary evidence was given by him in which he has stated that the correct report was not given at Police Sation and due to beating by the Police for continuos three days, the accused/appellant for the first time made extra judicial confession before the Police that he had murdred his wife.

Perusal of the merg intimation (Ex.P/2) shows that there is no mention of extra judicial confession made by the accused/appellant before this witness or other witness. The merg intimation simply says that on 25-4-1994 in the morning at about

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5.00 a.m. the accused/appellant came to his brother Chaituram who gave the merg intimation that his wife was missing since last night and when search was made, body of Budhiyarin Bai was found near the water spring outside the vicinity. Thereafter he went to Faguram and Sumaru and then went to the place of occurrence and saw the body. Had the accused/appellant made extra judicial confession before Tiharuram and the merg intimation was given in pursuance thereof by Chaituram, then there was no occasion for Chaituram to suppress the fact of making extra judicial confession before him, as Tiharuram has clearly stated the fact of making extra judicial confession by Sunaram before him before lodging the report.

In view of the above discrepancies, we are of the considered opinion that the evidence of PW/3 - Tiharuram does not inspire confidence of the Court. Even PW/2 – Chaituram has also stated in examination-in-chief that on his enquiry Tiharuram informed him that Sunaram has made extra judicial confession before him that he has murdered his wife. As has been mentioned above, the same has not been informed to the Police while giving merg intimation (ExP/2), therefore, his evidence cannot be believed. There is no other evidence to connect the accused/appellant with the murder of his wife Budhiyarin Bai. Apart from that, at the instance of the accused/appellant a wooden stick (Ex.P/10) was recovered, but no blood was found on the stick and it is common

[पीछे देखिये

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that in the village side such sticks are kept in the house. Therefore, merely on the basis of recovery of wooden stick, accused/appellant cannot be connected with the crime of murder of Budhiyarin Bai.

In view of the above, we are of the considered opinion that the findings of the trial Court holding the accused/appellant guilty under Section 302 of the I.P.C and sentencing him imprisonment for life are not based on any legal evidence, therefore, the same cannot be sustained.

In the result, the appeal succeeds and the same is allowed. The conviction and sentence passed against the accused/appellant for commission of the offence punishable under Section 302 of the Indian Penal Code are set aside. He be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K. Shrivatava
Judge

Raju

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